

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 99-171239

Employee: Margaret Sisk
Employer: Washington University
Insurer: Colleges and University Trust
c/o CCMSI
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: November 16, 1999
Place and County of Accident: St. Louis, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 26, 2006. The award and decision of Administrative Law Judge Kathleen M. Hart, issued May 26, 2006, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 18th day of September 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Margaret Sisk

Injury No.: 99-171239

Dependents: n/a

Before the

Employer: Washington University

Division of Workers'

Compensation

Department of Labor and Industrial

Additional Party:

SIF (open) Relations of Missouri

Jefferson City, Missouri

Insurer: Colleges and University Trust c/o CCMSI

Hearing Date: March 27, 2006

Checked by: KMH/tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: November 16, 1999
5. State location where accident occurred or occupational disease was contracted: St. Louis, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant fell and twisted her left knee while walking up the steps at work.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Left Knee
14. Nature and extent of any permanent disability: 25% permanent partial disability of the left knee
15. Compensation paid to-date for temporary disability: \$864.47
16. Value necessary medical aid paid to date by employer/insurer? \$12,873.44

Employee: Margaret Sisk

Injury No.: 99-171239

17. Value necessary medical aid not furnished by employer/insurer? unknown
18. Employee's average weekly wages: \$726.16
19. Weekly compensation rate: \$484.11/303.01
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: unknown

weeks of temporary total disability (or temporary partial disability) unknown

40 weeks of permanent partial disability from Employer

\$12,120.40

22. Second Injury Fund liability: Open

TOTAL: INDEFINITE

23. Future requirements awarded: pursuant to Award

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Mark Haywood

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Margaret Sisk

Injury No.: 99-171239

Dependents: n/a

Employer: Washington University

Before the
Division of Workers'
Compensation
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: SIF (open)

Insurer: Colleges and University Trust c/o CCMSI

Checked by: KMH/tr

A hearing was held on the above matter March 27, 2006. Margaret Sisk (Claimant) was represented by attorney Mark Haywood. Washington University (Employer) was represented by attorney Dave Reynolds.

STIPULATIONS

The parties stipulated to the following:

1. On November 16, 1999, while in the course and scope of her employment for Employer, Claimant sustained an injury which arose out of and in the course of her employment. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law. Employer's liability was fully insured by College and University Trust c/o CCMSI. Employer had notice of the injury and a claim for compensation was timely filed.
2. Claimant's average weekly wage on the date of injury was \$726.16 entitling her to rates of \$484.11 and \$303.01 for TTD and PPD respectively.

3. Employer has paid \$864.47 in TTD benefits to date representing 1 5/7 weeks of compensation. Employer has paid \$12,873.44 in medical benefits.

ISSUES

1. Whether Claimant is entitled to additional medical care.
2. If so, whether that medical care is medically causally related to Claimant's November 16, 1999 injury.
3. Nature and extent of permanent partial disability.

FINDINGS OF FACT

1. Claimant is a 53 year-old woman who is currently employed by Employer's School of Medicine as a Special Projects Administrator. Claimant worked in this capacity on the date of her 1999 work injury.
2. On November 16, 1999, Claimant fell while walking up the steps at work. Claimant testified when she fell, her left knee "went sideways", and her left knee and left shoulder hit the cement steps. Claimant had immediate pain in her left knee and left shoulder. She went back down the steps and took the elevator to her office where she iced her knee, kept it elevated and took some Advil.
3. Claimant's shoulder and elbow complaints resolved shortly after her injury.
4. When the knee swelling, bruising, and pain did not resolve, Claimant reported her injury to Employer.
5. Employer sent Claimant to Barnes Care. The doctor took x-rays and ordered physical therapy.
6. Claimant testified upon presenting for therapy, the therapist recommended Claimant not proceed with therapy as this would make her problems worse. The therapist recommended another doctor at Barnes Care who ordered an MRI and sent Claimant to Dr. Andersen.
7. Claimant first saw Dr. Andersen about a month after her injury. He diagnosed a torn meniscus and performed surgery March 8, 2000.
8. Dr. Andersen's surgery notes indicate he repaired a tear of the medical meniscus. He also found degenerative changes in Claimant's knee.
9. Dr. Andersen's follow-up records indicate Claimant reported improvement until her June 5, 2000 visit. At that time, she told Dr. Andersen her knee had been doing very well until she experienced a buckling episode the week before. Since that episode, her knee had swelling and persistent discomfort. Dr. Andersen's examination in June showed discomfort, moderate swelling and tenderness. He noted in this report his belief Claimant's ongoing complaints related to her degenerative changes.
10. Claimant testified her pain continued. Dr. Andersen performed an aspiration of fluid and a series of three injections, which Claimant testified did not resolve her pain.
11. Claimant continued to see Dr. Andersen and consistently complained of pain, some swelling, and difficulty with walking. Dr. Andersen reported he had little else to offer short of a total knee replacement. He recommended Claimant continue taking anti-inflammatories and tolerate her symptoms as long as possible to delay surgery.
12. Dr. Andersen released Claimant from treatment January 2001. At that time, Claimant had persistent symptoms with her knee but was not ready for a knee replacement.
13. Due to her persistent symptoms, Claimant saw Dr. Matava at her own expense for a second opinion. She had treated with him in 1998 for pain in her right knee. X-rays of her right knee in 1998 were normal with no evidence of osteoarthritis. At that time, Dr. Matava recommended a short course of therapy for her right knee and anti-inflammatory medications.
14. Claimant first saw Dr. Matava for her left knee August 14, 2001. His records also indicate Claimant had some improvement following surgery until she fell in June 2000. Following that fall, Claimant had recurrent swelling. Dr. Matava recommended weight loss and ordered an MRI, which did not reveal a recurrent tear. He further reported he would not recommend a total knee replacement at that point given the x-rays findings.

15. Dr. Andersen evaluated Claimant in 2002 at the request of Employer. At that time, Claimant was having difficulties with her knee on a daily bases. Dr. Andersen prescribed additional medication to manage Claimant's pain and delay knee replacement as long as possible. He opined Claimant would be a candidate for knee replacement if her pain became intolerable. He rated her disability at 30% of the knee with 15% from her work injury and 15% from her underlying degenerative changes. Claimant testified Dr. Andersen continued to prescribe Celebrex for her through 2005.
16. In November 2002, Dr. Andersen provided a supplemental report to address medical causation. He reported his opinion that the need for any potential surgery or knee replacement is primarily the result of Claimant's underlying arthritis. He believed her work injury may have exacerbated the arthritic problem.
17. Claimant testified she had no previous complaints regarding her left knee and had not been diagnosed with arthritis in her left knee before this 1999 injury.
18. In February 2006, Claimant again saw Dr. Andersen for evaluation at the request of Employer. Claimant told Dr. Andersen she had lost weight and felt this did improve her symptoms, but she still had substantial pain in her knee. Dr. Andersen indicated a meniscal tear and subsequent resection can aggravate the symptoms of underlying osteoarthritis, but he attributed the need for future surgery to her underlying arthritis. He stated the meniscal tear in isolation would not produce the need for a total knee replacement.
19. Claimant saw Dr. Levy at the direction of her attorney in November 2005. He testified Claimant would require a knee replacement. He opined this is a result of her work injury because Claimant was asymptomatic prior to that injury. He agreed Claimant's degenerative changes may have had a role in the need for ongoing treatment, but the degeneration was not the prevailing factor. But for the work injury, Dr. Levy believed Claimant would not need a knee replacement unless she had some other injury. He specifically testified the work accident was the prevailing factor in causing the problem and potential need for knee replacement. It was not just a triggering factor.
20. Currently, Claimant experiences swelling in her left knee on a daily basis. Her knee continues to give out. She has difficulty with stairs and exercise. She has continuous pain in her knee.
21. Claimant was credible.

RULINGS OF LAW

Having considered the entire record, and based upon the testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

Both parties agree Claimant had a compensable left knee injury in 1999. Surgery was performed in March 2000, and follow-up records show Claimant was progressing well. In June 2000, Claimant's knee buckled and the records show she had an increase in symptoms. Her condition continued to deteriorate to the point of daily problems with her knee.

Dr. Andersen and Dr. Levy believe Claimant will need further treatment and possibly a total knee replacement. However, they disagree on the cause of the need for additional treatment. The fact-finding body determines whose opinion is the most credible when the opinions of the medical experts conflict. *Kelley v. Banta Stude Construction Co., Inc.* 1 S.W.3d 43, 48 (Mo.App.E.D. 1999).

Dr. Andersen attributes Claimant's need for any additional treatment to her underlying arthritis, which he testified may have been exacerbated by her work injury. He testified that but for the arthritis, he doubted the work injury itself would have produced the need for additional surgery. While I acknowledge Dr. Andersen saw the extent of Claimant's degeneration at the time of surgery, Claimant credibly testified her left knee was asymptomatic before the November 1999 work injury. She also testified she had never been diagnosed with arthritis before her work injury. No medical records were offered to show any treatment to Claimant's left knee before 1999. Her prior treatment was to her right knee only, not her left knee.

I accept Dr. Levy's opinion that this previously asymptomatic individual was rendered symptomatic and in need of additional care by this injury. Dr. Andersen indicates that but for the arthritis, Claimant would not need further medical care. However, Employer is not in the position to choose the victims of accident and must accept them with their medical conditions as extant on the date of injury. Accordingly, I find the need for further medical care to be related to the 1999 injury as a substantial factor in the cause.

Section 287.140.1 RSMo (2000) provides that in addition to all other compensation, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. I find Employer is responsible to provide Claimant with medical treatment. Employer shall select a competent physician and

authorize any treatment recommended by the physician including, but not limited to:

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1. any tests and procedures as directed by the authorized treating physician
2. any medications directed by the authorized treating physician
3. any braces or similar devices ordered by the authorized treating physician
4. any necessary surgical procedures ordered by the authorized treating physician, including all doctor, hospital, diagnostic and medical costs
5. all post-operative and rehabilitative care as directed by the authorized treating physician.

TTD benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991) (overruled in part on other grounds). Pursuant to this award, Claimant may receive medical intervention for her left knee. Employer is ordered to provide TTD benefits to cover the healing period associated with such treatment, if Claimant is unable to work during that period.

A permanent partial award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions Claimant's limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991). With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App. 1983) (overruled on other grounds).

Dr. Levy assigned a 30% disability rating to Claimant's left leg. Dr. Andersen also assigned a 30% disability rating to Claimant's left leg, but he attributed half of that rating to her underlying degenerative changes and half to her 1999 work injury. Claimant testified she currently experiences knee swelling on a daily basis, her knee continues to give out on occasion, she has difficulty with stairs and exercise, and she continues to have pain in her knee.

Based upon all of the evidence, I find Claimant has sustained a 25% permanent partial disability to her left knee resulting from her November 16, 1999 injury.

This is a final award with medical benefits left open and subject to future benefits.

Date: _____

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation